

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AHERN PAINTING CONTRACTORS, INC.,  
et al.,

Defendants.

**19 Civ. 2096 (DAB)**

**STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL AS TO  
DEFENDANT AHERN PAINTING CONTRACTORS, INC.**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York; and defendant Ahern Painting Contractors, Inc. (“Ahern Painting” or “Defendant”) (together with the Government, the “Parties”);

WHEREAS, Ahern Painting is a New York-based company that has entered into federally-funded contracts and subcontracts for public construction projects;

WHEREAS, the United States Department of Transportation (“US-DOT”) promulgated regulations entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” to provide opportunities for businesses owned by socially and economically disadvantaged individuals to work on federally-funded public construction projects. *See* 49 C.F.R. Part 26 (the “DBE Regulations”).

WHEREAS, the DBE Regulations require that certain federally-funded projects have specific goals for DBE participation and that contractors make good faith efforts to meet or exceed those DBE goals, *see* 49 C.F.R. §§ 26.37, 26.45, 26.53;

WHEREAS, under the DBE Regulations, payments made to a DBE contractor count toward the DBE goal only if the DBE is performing a “commercially useful function” on the project, meaning that the DBE is “responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved,” 49 C.F.R. § 26.55;

WHEREAS, US-DOT provided federal funds to New York City Department of Transportation (“NYC-DOT”) for the Brooklyn-Bridge Rehabilitation project (Contract No. BRC 270 C/P (Contract #6)) (the “Brooklyn Bridge Project”), and NYC-DOT set forth a goal that 14% of the value of the work performed on the project go to DBEs;

WHEREAS, Ahern Painting entered into a subcontract to provide industrial painting work on the Brooklyn Bridge Project, and agreed to make good faith efforts to meet or exceed a DBE participation goal of approximately 14% of the value of Ahern Painting’s subcontract;

WHEREAS, US-DOT provided federal funds to the Metropolitan Transportation Authority and the New York City Transit Authority (together, “MTA”) for work on an elevated structure at Queens Plaza (Contract No. C-34904) (the “Queens Plaza Project”), and MTA set forth a DBE participation goal of 17% of the value of the work on the project;

WHEREAS, Ahern Painting entered into a contract to provide industrial painting work on the Queens Plaza Project, and agreed to make good faith efforts to meet or exceed a DBE participation goal of 17% of the value of the contract;

WHEREAS, the Government commenced this action by filing a complaint in this Court against Ahern Painting under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, and common law, and amended the complaint on August 15, 2019 (the “Amended Complaint”).

WHEREAS, the Amended Complaint alleges that from 2010 until 2015 (the “Covered Period”), Ahern Painting engaged a DBE called Tower Maintenance Corp. (“Tower”) to perform

work as a DBE on the Brooklyn Bridge Project and the Queens Plaza Project. The Amended Complaint also alleges that while Tower, as a DBE, was required to perform a commercially useful function, including by managing and supervising the work assigned, Spectrum Painting Corp. ("Spectrum"), a non-DBE, in fact managed and supervised the work assigned to Tower. The Amended Complaint further alleges that Ahern Painting knowingly, recklessly, or willfully blindly presented and/or caused to be presented false or fraudulent claims for payment for the DBE work to NYC-DOT and to the MTA (this conduct is referred to as the "Covered Conduct" for purposes of this Stipulation);

WHEREAS, on May 24, 2019, Ahern Painting filed a motion to dismiss the Complaint, which has not yet been decided;

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Ahern Painting in the Complaint for the Covered Conduct;

NOW, THEREFORE, upon the Parties' agreement, IT IS HEREBY ORDERED that:

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Ahern Painting admits, acknowledges, and accepts responsibility for the following conduct:
  - a. In January 2010, Ahern Painting entered into a subcontract with Skanska Koch Inc. ("Skanska") for industrial painting and rehabilitation work on the Brooklyn Bridge Project. Under the terms of the subcontract, Ahern Painting agreed to meet or exceed a DBE participation goal of approximately 14% of the value of Ahern Painting's subcontract or undertake good faith efforts to do so.
  - b. To meet its obligation, Ahern Painting entered into a subcontract with Tower, a certified DBE, to perform painting and blasting work on the Brooklyn Bridge Project.

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- c. In connection with the Brooklyn Bridge Project, Ahern Painting signed and submitted to Skanska various documents stating that the DBE work assigned to Tower would only be performed by Tower. Specifically, Ahern Painting signed and submitted:
  - (1) A DBE Utilization Worksheet dated December 1, 2010, in which Ahern Painting acknowledged that “no work may be assigned by [Tower] to a second tier subcontractor”; and
  - (2) Approximately 33 Contractor Reports of Contract Payments submitted between August 2010 and July 2015 in connection with claims for payment, each of which listed the amount Ahern Painting paid/owed to Tower as of the date of the report, and each of which included a certification by Ahern Painting that the payment made was for work performed by Tower, and a certification by Tower that the payment received was for work “solely” performed and supervised by Tower.
- d. Ahern Painting knew Skanska submitted the DBE Utilization Worksheet and the Contractor Reports of Contract Payments to NYC-DOT.
- e. NYC-DOT relied on the DBE Utilization Worksheet and the Contractor Reports of Contract Payments submitted by Ahern Painting to determine the value of Tower’s DBE contribution to the Brooklyn Bridge Project, whether Ahern Painting and Skanska were meeting the Brooklyn Bridge DBE goal, and whether Ahern Painting and Tower were complying with the applicable DBE Regulations. Ahern Painting was required to submit the Contractor Reports of Contract Payments as part of its claims for payment on the Brooklyn Bridge Project.
- f. In June 2011, Ahern Painting entered into a contract with the MTA to provide overcoat painting on the elevated structure at the Queens Plaza subway station. Under the terms of the contract, Ahern agreed to meet or exceed a DBE participation goal of 17% of the value of the contract.
- g. To meet its obligation, Ahern Painting entered into a subcontract with Tower to perform a portion of the painting work on the elevated transit line.
- h. In connection with the Queens Plaza Project, Ahern Painting signed and submitted various documents stating that the DBE work assigned to Tower would only be performed by Tower. Specifically, between February 2011 and March 2012, Ahern Painting signed and submitted approximately 20 Monthly DBE Progress Reports in connection with claims for payment, each of which stated that Tower did not “subcontract any portion of its work to a non-DBE.”
- i. The Monthly DBE Progress Reports were submitted to the MTA, and the MTA relied on those documents to determine the value of Tower’s DBE contribution to the Queens Plaza Project, whether Ahern Painting was meeting

the Queens Plaza DBE goal, and whether Ahern Painting and Tower were complying with the applicable DBE Regulations. Ahern Painting was required to submit the Monthly DBE Progress Reports as part of its claims for payment on the Queens Plaza Project.

j. Over the course of the Brooklyn Bridge Project and Queens Plaza Project, Ahern Painting was aware of the following facts regarding the involvement of Spectrum, a non-DBE, in the projects:

- (1) In March 2010, Ahern Painting's superintendent met with a Tower manager and a Spectrum manager (the "Spectrum manager") to do a walk-through of the Brooklyn Bridge worksite. Ahern's superintendent understood that the Spectrum manager would assist Tower in preparing the bid Tower submitted for its work as a DBE subcontractor on the Brooklyn Bridge Project;
- (2) In April 2010, Tower asked Ahern Painting whether it could subcontract a portion of its work on the Brooklyn Bridge Project to Spectrum. Ahern Painting informed Tower that Spectrum could not be a sub-contractor for Tower. In August 2010, Tower informed Ahern Painting that it had retained Spectrum as a "Lead, Health, Safety, and Quality Control" consultant for the Brooklyn Bridge Project, and Ahern Painting accepted that characterization without further inquiry;
- (3) In documents that Ahern Painting received from Tower and then submitted to Skanska in 2010, Tower identified the individual who Ahern knew to be a Spectrum manager as a "Tower VP" or as a Tower employee working on the Brooklyn Bridge Project;
- (4) In documents Ahern Painting received from Tower and then submitted to the MTA in 2011, Tower identified the individual Ahern knew to be a Spectrum manager as Tower's superintendent for the Queens Plaza Project;
- (5) Throughout the Brooklyn Bridge and Queens Plaza Projects, Ahern Painting managers communicated directly with the Spectrum manager regarding the management and supervision of the projects, including scheduling and inspecting Tower's DBE work, ordering materials for Tower's DBE work, and payment for Tower's DBE work. An Ahern Painting executive also communicated directly with Spectrum's owner regarding the Brooklyn Bridge and Queens Plaza Projects.
- (6) In March 2013, the Spectrum manager attended a meeting that Ahern Painting and Tower had with NYC-DOT regarding the status of Tower's DBE work on the Brooklyn Bridge Project and identified himself as a Tower representative;

- (7) In June 2013, after the Tower DBE work was substantially complete, Ahern Painting learned that certain equipment used on Tower's portion of the Brooklyn Bridge Project was owned by Spectrum; and
  - (8) In July 2013, after the Tower DBE work was substantially complete, Ahern Painting attended a meeting with Spectrum and Tower to discuss a settlement of disputes over payment by Ahern Painting to Tower for work performed on the Brooklyn Bridge Project.
- k. Ahern Painting recklessly disregarded facts showing that Spectrum managed and supervised Tower's DBE work on the Brooklyn Bridge and Queens Plaza Projects.
  - (1) Ahern Painting failed to seek clarification regarding the financial and other arrangements between Tower and Spectrum or request a copy of any contract or agreement between Tower and Spectrum regarding Spectrum's role. If Ahern Painting had done so, and Tower had responded truthfully, Ahern Painting would have learned that Tower and Spectrum had entered into written agreements specifying that Spectrum would provide project management support and furnish equipment on the Brooklyn Bridge and Queens Plaza Projects, that Tower and Spectrum would split any profits from the Tower DBE work on the Brooklyn Bridge and Queens Plaza Projects, and that in addition to the Spectrum manager, two other individuals that Ahern Painting believed to be Tower managers were in fact employed by Spectrum.
  - (2) Ahern Painting failed to assess whether Spectrum's actual involvement in the projects was substantial enough to jeopardize Tower's standing as a DBE performing a "commercially useful function" under the applicable DBE regulations.

3. Ahern Painting shall pay to the Government within 60 days of the Effective Date (defined below in Paragraph 23), the sum of \$3,000,000 plus interest which shall be compounded annually at a rate of 2.25% accruing from August 15, 2019, to the date of the payment (the "Settlement Amount") in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of New York. Of the Settlement Amount, \$1,500,000 constitutes restitution to the United States.

4. Ahern Painting agrees to cooperate fully and truthfully with the Government's investigation of individuals and entities not released in this Stipulation. Upon reasonable notice,

Ahern Painting shall encourage, and agree not to impair, the cooperation of Ahern Painting's directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Ahern Painting further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

5. Subject to the exceptions in Paragraphs 7 and 12 below (concerning excluded claims and bankruptcy proceedings), and conditioned upon Ahern Painting's full compliance with the terms of this Stipulation, including full payment of the Settlement Amount to the United States pursuant to Paragraph 3 above and compliance with Paragraph 4 above, the United States releases Ahern Painting, including its subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, the Financial Institutions Reform, Recovery, and Enforcement Act, 12 U.S.C. § 1833a, and the common law theories of payment by mistake and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Ahern Painting from liability of any kind.

6. Ahern Painting fully and finally releases the United States, its agencies, officers, employees, servants, and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Ahern Painting has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, employees, servants,



or agents related to the Covered Conduct and the United States' investigation, prosecution and settlement thereof.

7. Notwithstanding the releases given in Paragraph 5 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Stipulation; and
- f. any liability of individuals.

8. Ahern Painting shall be in default of this Stipulation if Ahern Painting fails to make the required payment set forth in Paragraph 3 above on or before the due date for such payment, or if it fails to comply materially with any other term of this Stipulation ("Default"). The Government shall provide written notice to Ahern Painting of any Default in the manner set forth in Paragraph 22 below. Ahern Painting shall then have an opportunity to cure the Default within ten (10) calendar days from the date of delivery of the notice of Default. In the event that a Default is not fully cured within ten (10) calendar days of the delivery of the notice of Default ("Uncured Default"), interest shall accrue at the rate of 12% per annum compounded daily on the remaining unpaid principal balance of the Settlement Amount, beginning ten (10) calendar days after mailing of the notice of Default. In the event of an Uncured Default, Ahern Painting shall



agree to the entry of a consent judgment in favor of the United States against Ahern Painting in the amount of the Settlement Amount, as attached hereto as Exhibit A. The United States may also, at its option, (a) rescind this Stipulation and reinstate the claims asserted against Ahern Painting in the Government Complaint; (b) seek specific performance of this Stipulation; (c) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing Ahern Painting by any department, agency, or agent of the United States; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. Ahern Painting shall not contest any offset imposed or any collection undertaken by the Government pursuant to this Paragraph, either administratively or in any Federal or State court. In addition, Ahern Painting shall pay the Government all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this Paragraph, Ahern Painting shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that relate to the Covered Conduct.

9. Ahern Painting, having truthfully admitted to the conduct set forth in paragraph 2 hereof (the "Admitted Conduct"), agrees it shall not, through its attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a "Contradictory Statement"). Any Contradictory Statement by Ahern Painting, its attorneys, agents, officers, or employees, shall constitute a violation of this Consent Order, thereby authorizing the Government to pursue any of the remedies set forth in paragraph 9 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Ahern Painting that it has

determined that Ahern Painting has made a Contradictory Statement. Upon receiving notice from the Government, Ahern Painting may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Ahern Painting learns of a potential Contradictory Statement by its attorneys, agents, officers, or employees, Ahern Painting must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Ahern Painting for the purpose of this Consent Order, or whether Ahern Painting adequately repudiated a Contradictory Statement to cure a violation of this Consent Order, shall be within the sole discretion of the Government.

10. Ahern Painting waives and shall not assert any defenses Ahern Painting may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action.

11. Ahern Painting represents and warrants that it has reviewed its financial situation, that it is currently not insolvent as such term is defined in 11 U.S.C. § 101(32), and that it reasonably believes it shall remain solvent following payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Stipulation, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Ahern Painting, within the meaning of 11 U.S.C. § 547(c)(1); and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended

to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Ahern Painting was or became indebted to on or after the date of this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).

12. If within 91 days of the Effective Date of this Stipulation or any payment made under this Stipulation, Ahern Painting commences any case, action, or other proceeding under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or a third party commences any case, action, or other proceeding under any law related to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking an order for relief of Ahern Painting's debts, or seeking to adjudicate Ahern Painting as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Ahern Painting or for all or part of Ahern Painting's assets, Ahern Painting agrees as follows:

- a. Ahern Painting's obligations under this Stipulation may not be avoided pursuant to 11 U.S.C. § 547, and Ahern Painting shall not argue or otherwise take the position in any such case, action, or proceeding that (i) Ahern Painting's obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) Ahern Painting is insolvent at the time this Stipulation was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to Ahern Painting.
- b. If any of Ahern Painting's obligations under this Stipulation are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its option, may rescind the release in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Ahern Painting for the

claims that would otherwise be covered by the release in Paragraph 6 above. Ahern Painting agrees that (i) any such claim, action, or proceeding brought by the Government would not be subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) as a result of the case, action, or proceeding described in the first sentence of this Paragraph, and Ahern Painting shall not argue or otherwise contend that the Government’s claim, action, or proceeding is subject to an automatic stay; (ii) Ahern Painting shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any claim, action, or proceeding that is brought by the Government within 60 calendar days of written notification to Ahern Painting that the release has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on date the Complaint was filed; and (iii) the Government has a valid claim against Ahern Painting in the amount of the Settlement Amount and the Government may pursue its claim in the case, action, or proceeding described in the first sentence of this Paragraph, as well as in any other case, action, or proceeding.

- c. Ahern Painting acknowledges that the agreements in this Paragraph are provided in exchange for valuable consideration provided in this Stipulation.

13. Ahern Painting agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Ahern Painting, including its present or former officers, directors, employees, and agents in connection with:

- (1) the matters covered by this Stipulation;

- (2) the United States' audit(s) and civil investigation(s) of matters covered by this Stipulation;
- (3) Ahern Painting's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with matters covered by this Stipulation (including attorneys' fees);
- (4) the negotiation and performance of this Stipulation; and
- (5) any payment Ahern Painting makes to the United States pursuant to this Stipulation and any payment Ahern Painting may makes to the Relator, including expenses, costs and attorneys' fees;

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Ahern Painting, and Ahern Painting shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Stipulation, Ahern Painting shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs (as defined in this Paragraph) included in payments previously sought by Ahern Painting from the United States. Ahern Painting agrees that the United States, at a minimum, shall be entitled to recoup from Ahern Painting any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted

requests for payment. Any payments due shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States, including the Department of Justice and/or the affected agencies, reserves its right to audit, examine, or re-examine Ahern Painting's books and records and to disagree with any calculation submitted by Ahern Painting or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Ahern Painting, or the effect of any such Unallowable Costs on the amounts of such payments.

- d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Ahern Painting's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

16. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

17. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this

Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties.

19. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

20. This Stipulation is binding on Ahern Painting's successor entities.

21. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

22. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Mónica P. Folch, Esq.  
Li Yu, Esq.  
David J. Kennedy, Esq.  
Assistant United States Attorneys  
United States Attorney's Office  
Southern District of New York  
86 Chambers Street, Third Floor  
New York, New York 10007  
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TO AHERN PAINTING:

Edward McDonald, Esq.  
Michael J. Gilbert, Esq.  
Dechert LLP  
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Phone: (212) 698-3500  
Email: [edward.mcdonald@dechert.com](mailto:edward.mcdonald@dechert.com)  
[michael.gilbert@dechert.com](mailto:michael.gilbert@dechert.com)

23. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

Dated: October 29 2019

**THE UNITED STATES OF AMERICA**

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York

By: 

Mónica P. Folch, Esq.

Li Yu, Esq.

David J. Kennedy, Esq.

Assistant United States Attorneys

86 Chambers Street, Third Floor

New York, New York 10007

Dated: October 24<sup>th</sup> 2019

**DEFENDANT AHERN PAINTING**

AHERN PAINTING CONTRACTORS, INC.

By: 

Kieran Ahern

President

DECHERT LLP

By: 

Edward McDonald, Esq.

Michael J. Gilbert, Esq.

Dechert LLP

1095 6th Avenue

New York, NY 10036

SO ORDERED:



HON. DEBORAH A. BATTS

UNITED STATES DISTRICT JUDGE

Dated: 10/31/19

New York, New York